

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.A-1-MA of 2015 (O&M)

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Date of decision:16.9.2016

M/s Satyawar Transportation

...Applicant

v.

M/s Lokesh Kumar Enterprises and another

...Respondents

....

(2) Criminal Misc. No.A-2-MA of 2015 (O&M)

.....

M/s Satyawar Transportation

...Applicant

v.

M/s Lokesh Kumar Enterprises and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Saurabh Dalal, Advocate for the applicant.

Mr. D.C. Dhalla, Advocate for the respondents.

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Inderjit Singh, J.

This judgment will dispose of the above mentioned two criminal miscellaneous applications filed by the complainant/applicant under Section 378(4) Cr.P.C. against M/s Lokesh Kumar Enterprises and Lokesh Kumar for grant of leave to appeal against the judgments dated

4.11.2014 passed by learned Judicial Magistrate Ist Class, Rohtak, vide which the accused have been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'). As the dispute is between the same parties and is relating to the same transaction, hence both petitions are being taken up for hearing together.

It has been mainly stated in the applications that the learned Judicial Magistrate Ist Class, Rohtak vide judgments dated 4.11.2014 has acquitted the respondents of charge under Section 138 of the NI Act. It has been stated that on the basis of the grounds taken in the accompanying appeals, the applicant is confident that upon adjudication of the appeals on merits, the impugned orders of learned JMIC, Rohtak shall be set aside and the respondents/accused shall be convicted. It has been prayed that leave to file appeals may be granted.

Notice of motion has been issued in these cases.

Mr. D.C. Dhaura, learned Advocate has put in appearance on behalf of the respondents and contested these petitions.

I have heard learned counsel for the applicant and learned counsel for the respondents and have gone through the record.

The facts are taken from Criminal Misc. No.A-1 of 2015. From the record, I find that M/s Satyawar Transportation through its proprietor Satyawar filed complaint against M/s Lokesh Kumar Enterprises through its In-charge Lokesh Kumar and Lokesh Kumar under Section 138 of the Act. As per the averments, two complaints had been filed against M/s Lokesh Kumar Enterprises and Lokesh Kumar on the pretext that the the accused

hire the milk vans of the complainant for his business purpose. The accused had a distributorship of Mother Dairy at various places in Delhi for supply of milk at various places. In lieu to pay the part payment for work done by the complainant, the accused had issued ten cheques bearing Nos.008891 to 008900 of ₹1,20,000/-. The aforesaid cheques were issued on different dates from 20.11.2009 at Village Bhalout, District Rohtak, in favour of the complainant. Three cheques bearing No.008898, 008899 amounting to ₹10,000/- each and bearing No.008900 amounting to ₹20,000/- were presented by the complainant for encashment, which were returned on account of insufficient funds. Legal notices were issued. When the amount was not paid, the complaints were filed.

The learned Judicial Magistrate Ist Class, Rohtak, vide judgments dated 4.11.2014 after appreciating the evidence acquitted the accused.

After going through the record specially, the judgments passed by the learned Judicial Magistrate Ist Class, Rohtak, I find that the findings given by the Court below are correct as per evidence and law. In no way, the findings can be held as perverse or against the evidence. Nothing has been pointed out as to what illegality has been committed by the Court below. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to what material evidence has not been considered by the Court below.

A perusal of the record shows that the complainant had not given any particular regarding the liability. Nothing is there as to how much

amount the accused was to pay to the complainant and when and how the liability arose.

At the time of evidence, CW-1 complainant-Satyawan failed to tell the points on which he used to supply the milk on behalf of M/s Lokesh Kumar Enterprises. He had merely stated that the milk was supplied at certain points on behalf of Mother Dairy and thereafter on different points at the instance of Lokesh Kumar Enterprises. There is no agreement placed on record where the complainant entered into the agreement with M/s Lokesh Kumar Enterprises and Lokesh Kumar-accused to supply the milk at various points. No record of any type had been produced by the complainant to show as to where he used to supply the milk and to whom. In cross-examination, he failed to tell the routes or the points on which he used to supply the milk. The defence version of the accused is that he had no dealing with the complainant directly and the accused used to supply the milk on behalf of Mother Dairy at certain point at Delhi where his retailers used to take the milk. In cross-examination, CW-1 admitted that he used to provide transport services to Mother Dairy and had no transaction with Lokesh Kumar directly and that he did not have any documentary evidence to show that the accused was his client. The Court below held that the complainant had failed to bring any substantial material on record to prove the allegations mentioned in the complaint. The Court below also held that in view of the statement of the complainant in cross-examination, that he had no direct transaction with Lokesh Kumar-accused and further that he used to provide transportation services to Mother Dairy, shows that there

was no liability towards the present petitioner. Therefore, from the cross-examination of the complainant itself the presumption under Section 139 of the NI Act has been rebutted.

The findings given by the learned Judicial Magistrate Ist Class, Rohtak, are correct which have been given after appreciating the evidence correctly and properly. The judgments passed by the learned Judicial Magistrate Ist Class, Rohtak, do not require any interference from this Court and the same are upheld.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous applications filed under Section 378(4) Cr.P.C. seeking leave to file appeals, the same are dismissed.

September 16, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No